Guidance for using NALC's template tenancy agreement for an allotment garden

Introduction

The purpose of this guidance to help a council use/ edit NALC's template allotment garden tenancy agreement. The template tenancy agreement is only for the purpose of letting of an allotment garden. An allotment garden is defined in s.22(1) of the Allotments Act 1922 as 'an allotment not exceeding 40 poles in extent which is used wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family.' 40 poles is the equivalent of 0.25 acre.

NALC's template is not suited for the tenancy of an allotment that exceeds 0.25 acre nor a tenancy with a person that is not an individual (e.g an Allotment Association/ Society, charity, company).

Stamp duty is payable on land transactions (which would include the grant of a tenancy of non-residential premises such as an allotment) but unless the rent exceeds £1000 per annum, no stamp duty is payable.

NALC's template allotment garden tenancy agreement incorporates the most important statutory rights conferred on a council and a tenant in respect of the letting of an allotment garden.

General matters

When a council uses the template allotment garden tenancy agreement,(i) the heading must be deleted and (ii) the italic text in square brackets identifies the text that a council needs to insert.

Use of plans

Use of a plan as referred to in clauses 1 and 7(n) of template is optional. The template makes references to a plan to better identify the location of the allotment garden and any means of access to and from it. If a council's freehold or leasehold ownership of the allotment garden is registered with the Land Registry, the council may use a good quality copy of the Land Registry's scaled plan as the basis for the plan to attach to the allotment garden tenancy agreement. If a council's freehold or leasehold ownership is not registered with the Land Registry, the council may use a good quality copy of the scaled plan in its title deeds (if there is one) or an Ordnance Survey scaled map as the basis for the plan to attach to the allotment garden tenancy agreement.

Clause 1

The text in the third set of square brackets is optional. See above notes for 'use of plans'.

Clause 2

The term of the tenancy may be a fixed term of one year only or a periodic tenancy from year for year. If the tenancy is for a term of one year, delete the text in the third set of square brackets.

Clause 3

The rent for residents in a council's area cannot be different to that for residents not in the council's area (Provision of Services Regulations 2009).

A council may require the rent to be paid in quarterly instalments but it cannot require a tenant to pay more than one quarter of the rent in advance, unless the annual rent is £1.25 (s.10(2) Allotments Act 1950). As an alternative, a council may require the rent to paid in full in one payment for example one or two months before the expiry of the term of the tenancy. A council may use either option [a] or [b] whether the tenancy is for a fixed term or periodic in nature (i.e. from year to year).The option not used should be deleted.

If using option [a] and the term of the tenancy is a fixed term of one year, delete the text in the fourth set of square brackets. If using option [b] and the term of the tenancy is a fixed term of one year, delete the text "and for every year after the first year of the tenancy on the [*insert date*] day of [*insert month*]" in square brackets.

Clause 4

The text in both square brackets should be amended as appropriate.

Clauses 4 and 5

Give effect to the statutory definition of an allotment garden (s.22(1) of the Allotments Act 1922).

Clause 6

If a tenant does not continue to reside within 1 mile of a council's area, the council has a statutory right to terminate the tenancy (s.30(2) of the Small Holdings and Allotments Act 1908) which has been incorporated in clause 11.

A council may grant a garden allotment tenancy to a person that does not reside in its area. In such a tenancy, a council must delete clause 6, the word 'or' at the end of the text in clause 11(b) and the text in clause 11(c).

As stated earlier, the rent for residents in a council's area cannot be different to that for residents not in the council's area (Provision of Services Regulations 2009).

Clauses 7(c) and (f).

A tenant cannot be prevented from keeping hens or rabbits (other than for a trade or business) or from placing, erecting and maintaining buildings and structures for such purpose (s.12 of the Allotment Act 1950).

Clause 7(n)

The text in the square brackets is optional. See above notes for 'use of plans'.

Clause 8

A council is free to make and revise rules which are necessary or proper for regulating its allotment garden lettings (s. 28 Small Holdings and Allotments Act 1908). If a council has made such rules, it should provide a copy of them to the tenant at the commencement of the tenancy. If the council updates the rules, it should provide a copy of the new rules to the tenant. The rules should also be available to the public via the council's publication scheme.

Clause 10

A council may terminate the tenancy without giving a reason if it serves the tenant with written notice of no less than 12 months expiring on or before 6th April or on or after 29th September (s.1(1)(a) of the Allotments Act 1922).

Clause 11

See above notes for clause 6.

A council has a statutory right to terminate the tenancy for the reasons given if it serves the tenant with one month's notice to quit (s.30(2) of the Small Holdings and Allotments Act 1908).

Clause 12

One out of four of the statutory grounds for re- entry and termination of the tenancy has been incorporated into the template (s.1(1)(e) of the Allotments Act 1922. The other statutory grounds for re-entry by the Council (s.1(1)(b),(c) and (d) of the Allotments Act 1922) which require the Council to give three months' prior written notice are less likely to be met but may be relied upon even though they have not been incorporated into the template.

Clause 13

If a council relies on the express terms of the tenancy agreement or statutory provisions for re-entry (some requiring a council to give notice before re-entry) the tenant has statutory rights to compensation from the Council (s.2 of the Allotments Act 1922, s.3 of the Allotments Act 1950).

Clause 14

The period of notice required by a tenant to terminate an allotment garden tenancy is not prescribed by legislation. Two months is a sensible period of time.

Clause 16

A council should choose one of the options of the text in square brackets, and delete the option not used.

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